

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSE CHEPITO AGUILAR, #1543906, §
§
Petitioner, §
v. § Civil Action No. **3:12-CV-35-L-BK**
§
RICK THALER, Director, §
Texas Department of Criminal Justice, §
Correctional Institutions Div., §
§
Respondent. §

ORDER

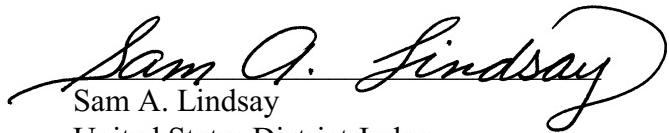
The Fifth Circuit remanded this case for a determination as to whether Petitioner has shown excusable neglect or good cause to support his timely motion for extension of time to appeal. As noted by the Fifth Circuit, Monday, March 18, 2013, was the final day for filing a timely notice of appeal. The case was referred to Magistrate Judge Renee Harris Toliver, who entered Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on June 12, 2013, recommending that Petitioner be granted an extension of time to appeal under Federal Rule of Appellate Procedure 4(a)(5). The magistrate judge determined that Petitioner filed his notice of appeal on March 19, 2013, when he handed it to prison officials for mailing the same day. “In light of the minimal delay involved, the absence of prejudice, and Petitioner’s prompt action in preparing his notice of appeal the same day he received notice of the judgment,” the magistrate judge concluded that Petitioner has shown sufficient excusable neglect for an extension of time. No objections to the Report were filed.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate

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judge are correct, and **accepts** them as those of the court. The court therefore **grants** Petitioner a one-day extension of time to appeal under Fed. R. App. 4(b)(4), and his appeal filed on March 19, 2013, is **deemed timely**. The Clerk of the Court is **directed** to return this case to the United States Court of Appeals for the Fifth Circuit for further proceedings or dismissal, as may be appropriate.

It is so ordered this 2nd day of July, 2013.



Sam A. Lindsay
United States District Judge